(2)

No. 04-152

SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

A.M.P., *et al.*,

Petitioners,

v.

CWM and ACM, by PAM, and DHM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

BRIEF IN OPPOSITION FOR RESPONDENTS CWM, PAM, AND DHM

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QUESTIONS PRESENTED

1. Where petitioners fail to assert any valid claim for relief—much less a federal question—in the state-court proceedings, does this Court lack jurisdiction to issue a writ of certiorari?

2. Is it a denial of due process to preclude trust beneficiaries from challenging the parent-child relationships between their father and their half-siblings when they failed to challenge the same relationships in an earlier trust proceeding involving the same parties?

3. Did the Minnesota Court of Appeals correctly determine that parent-child relationships conclusively established for all purposes cannot be challenged?

LIST OF PARTIES

Petitioners are the older six of nine children of JHM's several marriages. Petitioners are sometimes referred to herein as "the Older Children."

Respondent ACM is a minor, and appears in this litigation through PAM, his mother. DHM and CWM, sons of JHM and PAM who have reached the age of majority, are also Respondents. These three children of JHM and PAM are referred to herein as "the Younger Children."

William J. Berens (as successor to Robert J. Struyk) and Phillip H. Martin are trustees of three trusts: the JHM 1974 Trust, the 1980 JHM Family Trust, and the 1980 SMC Trust. They appear in this litigation in their capacities as trustees. They are referred to herein as the "Trustees."

By Orders of the Minnesota Court of Appeals filed on June 25, 2003 and July 21, 2003, the parties were directed to use initials or pseudonyms in their filings when referring to the parties to this matter. Accordingly, the initials used in the Minnesota appellate courts are used herein.

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RELEVANT AUTHORITY INVOLVED

Petitioners cite the due-process provision of the United States Constitution amendment XIV as the sole predicate for their Petition. However, as discussed below, Petitioners failed to properly assert any claim on their own behalf for relief in the Minnesota state-court proceedings; neither did they assert a proper due-process claim.

STATEMENT OF THE CASE

A. The Trusts

The trusts ("Trusts") created by JHM at issue here are: (1) the JHM 1974 Trust dated December 31, 1974 ("1974 Trust"); (2) the 1980 JHM Family Trust dated December 30, 1980 ("1980 JHM Trust"); and (3) the 1980 SMC, KWM and LMS Trust dated December 30, 1980 ("1980 SMC Trust").[1] These latter two trusts are also collectively referred to herein as the "1980 Trusts." The Trusts all left the class of beneficiaries open to those born after the Trusts were established. Minnesota is the situs of the Trusts.

The principal beneficiaries of the 1974 Trust are JHM's "issue." The 1974 Trust defines "issue" as:

> [A]ll persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him.

The 1980 JHM Trust names JHM's grandchildren as the primary beneficiaries. The primary beneficiaries of the 1980

1. It is undisputed that JHM funded the 1980 SMC Trust and thus is the trust settlor. (Mem. in Supp. of Mot. to Dismiss dated Feb. 6, 2002, at 8-10.)

SMC Trust are JHM's children. In both 1980 Trusts, a "child" or "grandchild" is defined as "issue." The 1980 Trusts contain the identical definition of "issue":

> "Issue" means all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

B. JHM, PAM and Their Children

The Younger Children were born in Florida during JHM and PAM's marriage, which began in 1979 and ended in 1991. JHM is identified as the father of the children on their respective birth certificates. The Younger Children have lived in Florida since their birth, as have JHM and PAM.

JHM has six Older Children (Petitioners) from two earlier marriages. Three of the Older Children—JM, DDM, and KMR—are trustees of the two 1980 Trusts. JHM is one of several heirs to a large, closely-held company fortune. The remaining Trustees of the trusts, who commenced this action in Minnesota state court, are members of the company's law firm.

The Younger Children's parentage was first addressed in 1986, when JHM filed for divorce from PAM. In his Divorce Petition, JHM denied being the father of DHM and CWM. JHM later dismissed the divorce action, and

stipulated, in the dismissal filed with the Florida Court, that "with respect to the issues raised by him relative to the paternity of [CWM and DHM], he [JHM] hereby voluntarily dismisses his petition with prejudice."[2] (Emphasis in original.) At least two of the Petitioners had knowledge of this parentage issue in or about 1986. (Resp. Ct. of Appeals App. 63.) JHM and PAM continued their marriage for an additional five years, during which the youngest child, ACM, was born.

In 1989, the trustees of another family trust, created by JHM's grandmother, brought a petition in Minnesota state court seeking authorization to distribute many millions of dollars to all of JHM's "children," defined *inter alia* in the trust as "all legal issue". In this petition, the Younger Children (along with the Older Children) are identified as JHM's children, and as such, eligible to receive trust funds. Petitioners all received notice of this petition; none of them made an appearance or filed an objection in the proceeding. The district court found that the Younger Children are JHM's children (i.e., his legal issue), and thus beneficiaries of the trust.

JHM divorced PAM in 1991. In the divorce Settlement Agreement, incorporated within an adjudicated Judgment and Decree in Florida, JHM acknowledged that the Younger Children are his children, born of his marriage to PAM. The Settlement Agreement and Judgment and Decree conclusively resolved any issue of parentage of all the Younger Children, to the extent any such issue remained. JHM not only acknowledged the Younger Children as his and agreed to support them, but also specifically agreed that the Younger

2. Petitioners fail to mention in their statement of facts that the dismissal was with prejudice.

Children would share equally with his other children in any testamentary disposition of his assets, including assets held in trust for his benefit. He did so with knowledge they are not his natural children. Contrary to Petitioners' statement of facts, the Settlement Agreement was not simply an agreement for support—it was an adjudication of parentage under Florida law.

C. The Legal Proceedings Seeking to Eliminate the Younger Children as Trust Beneficiaries.

In 2000, at least nine years after the Younger Children's parentage had been finally and conclusively established for all purposes under Florida law, JHM was declared legally incapacitated in an action started by two of the Petitioners, KMR (a trustee of the 1980 Trusts) and SMK. Less than three months after JHM was declared legally incapacitated, the Trustees, at the behest of Petitioners, brought an action in Minnesota state district court, purportedly under Minn. Stat. § 501B.16, in which they asked the court to interpret the Trusts and determine the beneficiaries thereof.[3]

The Trustees moved for partial summary judgment construing the Trusts as limiting beneficiaries to JHM's biological children. They also asked the Court to order blood or saliva tests to resolve the question of the "parentage" of the Younger Children. Respondents moved to dismiss the petition because the Trustees lack standing to challenge the parentage of the Younger Children, which has long been established in Florida, their domicile. In the alternative,

3. Section 501B.16 permits a trustee or other interested parties to petition the court to, among other things, interpret a trust and determine the persons having an interest in the trust's income and principal. Minn. Stat. § 501B.16 (2002).

Respondents sought summary judgment based on the language of the Trusts, which does not require biology as a criteria for beneficiary status. The Older Children, as interested parties, participated in the proceedings but never sought relief themselves. They simply supported the Trustees' petition.

The district court granted the Trustees' Motion for Partial Summary Judgment, finding that beneficiaries need to be biological descendants, and denied Respondents' Motion to Dismiss, finding the Trustees have standing to challenge the paternity of the Younger Children. The district court subsequently ruled that the Younger Children are not the biological descendants of JHM unless they submit to DNA testing to establish their biological connection to him.

Recognizing this action as a paternity challenge,[4] the Minnesota Court of Appeals reversed the district court's grant of partial summary judgment to the Trustees, and ordered entry of summary judgment in favor of the Respondents. The court held that because the Younger Children's paternity had been conclusively determined under applicable parentage laws, the Trustees could not collaterally challenge the determination under the guise of seeking trust instruction under Minn. Stat. § 501B.16. The Court of Appeals explained that because the presumption of the Younger Children's parentage is now irrebuttable under both Florida and Minnesota law, the Younger Children are JHM's biological descendants as a matter of law.

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4. "As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition." *In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated Dec. 31, 1974* ("12/31/74 Trust Case"), 674 N.W.2d 222, 228 (Minn. Ct. App. 2004).

The Trustees filed a petition for further review of the Court of Appeals' decision with the Minnesota Supreme Court. Petitioners also filed such a petition, despite not having filed a separate petition at the district court level or taking any action before the lower courts other than to support the Trustees' positions. The Minnesota Supreme Court denied both petitions for further review.

REASONS FOR DENYING THE PETITION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Petitioners present no such reasons for this Court's review of the decision below. Indeed, the decision below does not conflict with a decision of this Court, any Court of Appeals, or any other state or federal court. It raises no question worthy of review by this Court. Instead, the decision is consistent with long-established precedent uniformly noted with approval by this Court and numerous other courts nationwide. That precedent protects the conclusive presumption of parentage for children born in wedlock from collateral attack; it fosters substantive social policies of protecting the integrity of the family and promoting legitimacy.

Moreover, Petitioners, who addressed only issues and rights asserted by the Trustees in the trial court and the Minnesota Court of Appeals, have preserved no issue for review by this Court. Further, no proper federal due-process challenge was made by Petitioners below. Even if one had been made, there is no valid basis on which to justify a challenge to the conclusively established legitimacy and parentage of the Younger Children.

I. PETITIONERS' DEMAND FOR A WRIT OF CERTIORARI SHOULD BE DENIED FOR LACK OF JURISDICTION BY THIS COURT.

In order for this Court to have jurisdiction to issue a writ of certiorari, the validity of a state statute must have been "drawn into question" on a federal ground, or a federal right must have been "specifically set up or claimed." 28 U.S.C. § 1257(a) (1993). The failure to properly raise a federal question in the state court action necessarily leaves the Supreme Court without jurisdiction. *See Hill v. California*, 401 U.S. 797, 805 (1971); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (the Court will not "decide federal constitutional issues raised here for the first time on review of state court decisions") (quoting *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969)).

Here, Petitioners failed to properly raise any question, much less a federal question, on their own behalf before the Minnesota state courts. The Minnesota Court of Appeals decision for which Petitioners demand a writ of certiorari results from a petition filed by the Trustees pursuant to Minn. Stat. § 501B.16, which permits trustees to petition the court to determine the persons having an interest in the trust's income and principal. While they participated in the proceeding instituted by the Trustees, ***Petitioners never sought relief on their own behalf.*** Instead, before both the district court and Court of Appeals, Petitioners argued only on behalf of the Trustees' position.[5] As a result,

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5. Had Petitioners commenced their own proceeding or sought relief on their own behalf, they would have been barred by collateral estoppel due to the 1989 judicial determination that the Younger Children are JHM's legal issue. *See* discussion, *infra*.

Petitioners have no basis upon which to seek relief from this Court.[6]

Petitioners assert that they raised an issue in the Minnesota Court of Appeals proceeding as to whether their own due-process rights would be violated by a determination that JHM's parentage of the Younger Children is conclusive. Pet. at 5 n.8. They did not. Instead, the short discussion regarding "due process" in Petitioners' brief before the Court of Appeals dealt only with the *Trustees'* alleged due-process rights; Petitioners failed to raise any due-process claim on their own behalf. (Pets' Ct. of App. Br. at 15-18.)

After the Trustees lost at the Minnesota Court of Appeals, Petitioners, for the first time, attempted to raise the issue of "due-process" on their own behalf. In a three-sentence argument contained in their Petition for Further Review filed with the Minnesota Supreme Court, they said:

> On the other hand, Minn. Stat. § 501B.16 does accord standing to petition the court to determine or identify beneficiaries. Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). The Court of Appeals, however, declines to afford such right to the Trustees and to [Petitioners].

(Pet. for Further Rev. at 5.) Because Petitioners chose not to seek independent relief in the district court or Court of

6. Petitioners' continued participation in this action, if any, is dependent upon the Trustees' action continuing. While the Trustees have demanded a writ of certiorari, their demand is without merit and should be denied. (*See* Response to Petition for Certiorari, No. 04-97.)

Appeals, they could not raise their own alleged due-process issues before the Minnesota Supreme Court. *See Fahrendorff by & through Fahrendorff v. North Homes*, 597 N.W.2d 905, 909 (Minn. 1999).

In any event, raising a federal question for the first time in a petition for review with the highest state court is generally insufficient unless the court actually entertains the petition and expressly decides the question. *See Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997); *Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958); *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945). Here, the Minnesota Supreme Court denied Petitioners' request for further review, and would not have entertained Petitioners' belated constitutional challenge on their own behalf even if it had accepted review. *State v. Schleicher*, 672 N.W.2d 550, 555 (Minn. 2003) (under Minnesota law, a party cannot challenge the constitutionality of a statute for the first time on appeal to the Minnesota Supreme Court). Because the Minnesota Supreme Court would not have considered Petitioners' constitutional arguments, this Court lacks jurisdiction to do so. *See Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) (when constitutional issue is not decided below in a manner sufficient to bring the matter before a state appellate court, the U.S. Supreme Court lacks jurisdiction to consider the federal question). Consequently, the petition for a writ of certiorari should be denied.[7]

7. Indeed, if Petitioners had intended a constitutional challenge to the Minnesota Parentage Act, Rule 24.04 of the Minnesota Rules of Civil Procedure mandated that Petitioners notify the attorney general that the constitutionality of the Parentage Act was being drawn into question within such time as to afford the attorney general an opportunity to intervene. Petitioners did not provide the attorney general with notice of a constitutional challenge, calling into greater question whether they made such a constitutional challenge—as opposed to rhetorical flourish.

II. PETITIONERS HAVE NOT BEEN DEPRIVED OF DUE PROCESS AND THE MINNESOTA COURT OF APPEALS' DETERMINATION WAS CORRECT.

A. Petitioners' Failure to Assert Their Claimed Property Interests in a Prior Trust Proceeding Bars Them From Now Asserting a Deprivation of Due Process.

Even if there were no fatal jurisdictional flaws in Petitioners' petition, there would be no substantive basis upon which to grant their petition. Petitioners assert that they have been deprived of due process because they had no opportunity to be heard with respect to the Younger Children's status as JHM's legitimate children. This is wrong. Assuming, contrary to law, that trust beneficiaries have standing to challenge the percentage of children born in wedlock, Petitioners, who have been on notice of the facts underlying the Trustees' claims since at least 1986,[8] had the opportunity to mount a judicial challenge to the Younger Children's status as JHM's legitimate children in a 1989 proceeding. They elected not to do so, a fact confirmed by the Court of Appeals in its decision:

> In 1989, the trustees of a fourth trust, created for the benefit of JHM and not at issue here, filed a petition in Minnesota district court seeking authorization to distribute trust assets to JHM's "children," a beneficiary class defined in the trust instrument as "all [of JHM's] legal issue and adopted children." The petition, ***which was considered without objection from the older***

8. At least two of the Older Children were well aware at the time that JHM had previously denied paternity of those Younger Children then in existence.

> ***children***, identified the younger children as JHM's and therefore eligible to receive trust distributions. In granting the petition, ***the district court specifically found that [the Younger Children] were JHM's children.***

12/31/74 Trust Case, 674 N.W.2d at 226 (emphasis added). Had the district court petition been filed by Petitioners as opposed to the Trustees—who were not parties to the 1989 proceeding—Petitioners would have been bound under the doctrine of collateral estoppel by the determination in the prior proceedings that the Younger Children are JHM's legal issue and thus his lineal descendants. *See In re Trust Under Will of Holden*, 291 N.W. 104, 107 (Minn. 1940). To the extent that the Older Children are now trying independently to seek relief that was not sought in the district court or the Court of Appeals, their claims remain barred by collateral estoppel. *See In the Matter of Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. Ct. App. 1993).

B. Petitioners' Status as Trust Beneficiaries Gives Them No Rights With Respect to Any Parentage Determination.

Even if, contrary to law and common sense, Petitioners had been given the right to participate in the Florida divorce proceedings that conclusively determined JHM's parentage of the Younger Children, Petitioners would have had no right as trust beneficiaries to prevent JHM from acknowledging his parentage of the Younger Children. Under the Trusts, JHM retained the right to add more beneficiaries by having more children—conceiving them, acknowledging them, or

adopting them. Both acknowledgment and adoption are legislatively sanctioned methods of establishing a parent-child relationship under Florida and Minnesota law. Petitioners' claim that their due-process rights have been violated by JHM's exercise of this unfettered right to add beneficiaries pursuant to a state-sanctioned process[9] is patently unfounded. This Court has rejected arguments like Petitioners', holding that even a biological father has no due-process right to challenge a conclusive presumption of paternity arising from a state parentage act. *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989).

In *Michael H.*, this Court confirmed that the United States Constitution does not bar a state from establishing a substantive rule of law that a child born within wedlock is the lawful child of the husband, and, under such circumstances, from deeming paternity not to be an adjudicatory fact subject to litigation other than as expressly authorized by statute:

> While §621 [California paternity statute] is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law. California declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during and born into, an existing marriage was begotten by someone other than the husband. . . . As the Court of Appeals phrased it "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife,

9. *E.g.* the Parentage Act.

> the husband is to be held responsible for the child, and that the integrity of the family should not be impugned." Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would otherwise be destructive of family integrity and privacy.

Michael H., 491 U.S. at 119-20 (citation omitted).

Florida law, which governs the Younger Children's legal status, implements substantive polices protecting the integrity of families by making determinations of parentage conclusive for all purposes. *Knauer v. Barnett*, 360 So. 2d 399, 406 (Fla. 1978); Fla. Stat. § 742.091 (2002); Fla. Stat. § 742.011 (2002). Here, the Minnesota Court of Appeals recognized that the Younger Children's parentage and legitimacy had been conclusively determined in Florida,[10] and that the Minnesota Parentage Act extends full faith and credit to such determinations. Minn. Stat. § 257.67, subd. 1 (2002); *see also* Minn. Stat. § 257.66, subd. 1 (2002) (adjudications of parentage are "determinative ***for all purposes***") (emphasis added). The Court of Appeals' holding that Petitioners are thus barred from challenging the Younger Children's parentage is entirely consistent with *Michael H.*

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10. In a transparent effort to minimize the determinative effects of the 1991 divorce proceedings, Petitioners improperly refer to the Final Judgment of Dissolution of Marriage—by which JHM judicially acknowledged the Younger Children as his and agreed that they were to share equally with his other children in any testamentary disposition of his assets (Resp. Ct. of Appeals App. 67-72)—as a mere stipulation regarding "child support obligations." (Pet. at 3.)

Petitioners' attack on *Michael H.* is unavailing.[11] Courts in many states have recognized the pitfalls in the outcome urged by Petitioners and addressed by *Michael H.*, and, therefore, have precluded parentage challenges by persons other than the child, the mother, the father, or the putative father.[12]

11. Petitioners' attempt to distinguish *Michael H.* on the purported grounds that there were no third-party property interests at stake does not withstand scrutiny. Any determination of a parent-child relationship will necessarily affect property interests of third parties by determining the child's rights to inherit property and to receive benefits. Under Florida and Minnesota law, such third parties do not have standing to challenge a determination of parentage.

12. *See In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758 (N.J.), *cert. denied*, 534 U.S. 889 (2001) (prior adjudication of child-parent relationship bars third-party challenge to parentage, based upon language and policy of New Jersey's Parentage Act); *Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (right to dispute legitimacy of child born in wedlock limited to husband and wife); *Weir v. Ferreira*, No. F026210 1997 Cal. App. LEXIS 1046 (Cal. Ct. App. Dec. 17, 1997) (trustees seeking to determine "issue" of trusts were barred from relitigation of question of child's parentage); *In the Matter of Estate of Lamey*, 689 N.E.2d 1265, 1268-69 (Ind. Ct. App. 1997) (child's uncle precluded from attempts to "disestablish" child's paternity for purposes of determining heirs); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. Sup. Ct. 1967) (where neither husband or wife disputed legitimacy of child born in wedlock, all others were barred from doing so); *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-64 (Tex. Civ. App. 1955) ("If the father renounces the right to bastardize his alleged son . . . it is extinguished and can never thereafter be exercised by anyone"); *In re Paternity of Vainio*, 943 P.2d 1282, 1285 (Mont. 1997) (siblings lacked standing); *In re Saloy*, 10 So. 872, 876 (La. 1892) (if father does not dispute paternity, "the door is forever closed" to others); *Theis v. City of Miami*, 564 So. 2d 117, 119 (Fla. 1990) (employer precluded from challenging legitimacy of child born in (Cont'd)

For example, the New Jersey Supreme Court, in a case with facts very similar to those here (and as to which this Court denied certiorari), confirmed that beneficiaries of trust property—such as Petitioners here—may not seek to defeat established paternity determinations of their siblings in order to increase their proportionate share of trust assets. *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758-59 (N.J.), *cert. denied*, 534 U.S. 889 (2001). The New Jersey decision, citing *Michael H.*, rejected the argument that such a rule of law violates the beneficiaries' due-process rights, and noted that the alleged protected interest (a purported economic right to become eligible for an unspecified share of trust proceeds) occupies a lower place in the hierarchy of rights when compared to the putative father's right to a parent-child relationship at issue in *Michael H. In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d at 758-59. Petitioners have offered no compelling

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(Cont'd)

wedlock); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock); *Beard v. Vincent*, 141 So. 862, 863-64 (La. 1932) (collateral heirs of decedent barred from challenging parentage of children born during marriage); *Clement v. Merchants Nat'l Bank of Mobile*, 493 So. 2d 1350, 1352 n.2 (Ala. 1986) (parties questioned for not raising standing issues for collateral relative); *Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (heirs of decedent precluding from attacking legitimacy); *Johnson v. Johnson*, 395 So. 2d 640, 641 (Fla. Dist. Ct. App. 1981) (relitigation of paternity issue resolved in divorce proceedings would be "chaotic" and to require children and former wives to submit to blood tests would be humiliating).

reasons why a contrary result should be reached here even if the issue had been properly raised below.[13]

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13. Petitioners argue that they have been deprived of their due-process right to challenge the legitimacy of the Younger Children and that such right is unaffected by various conclusive, judicial adjudications of parentage. This claim fails for two reasons. First, the Younger Children are JHM's legitimate children as a matter of law in Florida and Minnesota (by virtue of being born during wedlock). (*See* Resp. Ct. of Appeals Br. at 11, 25-30.) Petitioners have never offered any competent evidence that JHM intended any meaning for "legitimate" other than its accepted meaning under Florida and Minnesota law. And second, Petitioners **conceded** both the Younger Children's legitimacy and paternity during the state-court proceedings. *See* Pet. Ct. of Appeals Br. at 9 ("The legitimacy of Claimants . . . cannot override the fact that the Trusts require that, with the exception of legal adoption, the children must be descended in JHM's bloodline."); Resp. Ct. of Appeals App. 222 (transcript of Older Children's counsel: "paternity, as far as I can tell, is established."). There is simply no basis for Petitioners' due process claims based upon "legitimacy." The argument was never made below; if it had, it would have been found totally without merit.

CONCLUSION

For the foregoing reasons, Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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